



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 11, 1996

Mr. David M. Douglas
Assistant Chief Legal Services
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR96-0025

Dear Mr. Douglas:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 35524.

The Texas Department of Public Safety ("DPS") received a request for information "pertaining to all words spoken, in whatever form, at or in regard to the hearing or meeting held on July 11, 1995, concerning Ms. Cheryl Steadman's complaints of unlawful treatment by the Texas Rangers." You indicate that DPS has already provided some of the information at issue, but you contend that other responsive information is excepted from disclosure pursuant to section 552.103(a).

To show the applicability of section 552.103(a), a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.-Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. The information you provided shows that there is a pending complaint with the Equal Employment Opportunity Commission ("EEOC") against DPS, alleging discrimination on the basis of sex. This office has stated that a pending EEOC complaint indicates litigation is reasonably anticipated and therefore meets the first prong of the section 552.103(a) test. Open Records Decision Nos. 386 (1983) at 2; 336 (1982) at 1. You also submitted to this office for review representative samples of the information at issue.¹ Our review of the information submitted shows that is related to the subject of the

¹In determining that information on the application forms may be withheld from disclosure, we assume that the representative samples of information you supplied to this office are truly representative of the requested records as a whole. See Open Records Decision Nos. 499, 497 (1988) (where requested documents are numerous and repetitive, governmental body can submit representative sample; but if each record contains substantially different information, all must be submitted.) This decision does not reach,

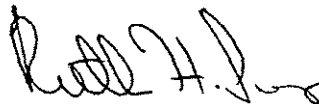
anticipated litigation. You thus have shown the applicability of section 552.103(a) to the information at issue, which may be withheld pursuant to section 552.103(a).

However, in making this determination, we assume that the opposing party to the anticipated litigation has not previously had access to the information. Absent special circumstances, once information has been obtained by all parties to the litigation, for example, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision No. 349 (1982) at 2. If the charging party has already seen or had access to the information at issue, there is no justification for now withholding that information pursuant to section 552.103(a). The applicability of section 552.103(a) also ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982) at 3.

We also note that it is unclear from your letter whether all information disclosed at the public meeting has been provided the requestor. You state that DPS held a public meeting July 11, 1995, and that all of the "items admitted into evidence at the meeting" and which were thus publicly disclosed, have been provided to the requestor. If other information was also publicly disclosed at the meeting, whether entered into evidence or not, that information may not be withheld from the requestor. See Gov't Code § 552.007; Open Records Decision No. 221 (1979).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref.: ID# 35524

Enclosures: Submitted documents

(Footnote continued)

and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than what was submitted to this office.

cc: Ms. Beatrice Mladenka-Fowler
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(w/o enclosures)